

A

LETTER

To the Right Honourable the

LORD MAYOR,

Occasioned by his LORDSHIP'S

NOMINATION

OF

FIVE PERSONS,

Disqualified by Act of Parliament,

AS

Fit and Proper PERSONS

To SERVE the

OFFICE of SHERIFFS.

IN WHICH

The NATURE and DESIGN of the
CORPORATION ACT is impar-
tially considered and stated.

Tentandum est.

LONDON:

Sold by J. ROBERTS near the Oxford Arms in Warwick
Lane; J. NOON at the White Hart in Cheapside;
and J. GRAY at the Cross Key in the Poultry.
M.DCC.XXXVIII.





A
L E T T E R

To the Right Honourable the
L O R D M A Y O R, &c.

Right Honourable,

I AM one amongst the large
Number of your Lordship's
Fellow Citizens, who have
not only a very sincere
Esteem for you, as a Gen-
tleman of a worthy Character in *private*
Life, but a very high Opinion of your
Integrity and *Prudence*, as the *chief Ma-*
gistrate of this great and opulent City;
and think that your Behaviour in many
Things hath been such, as that your
Lordship hath been *exceeded* but by few

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who

who have born the same honourable Office before you, and are *worthy of the Imitation* of all who come after you.

I could have wished, my Lord, that your Conduct had been so *intirely unexceptionable*, as that no one of the different Parties amongst us could have had any *just Reason* of complaint, or ground to have charged you with any Thing of *partiality*. Your Lordship well knows, that the chief Magistrate of the City ought to be of *no Party*, and that nothing can so effectually lessen the *Dignity* of that Character, as the *mixing* with it any of the little *Piques* and Prejudices that too often enter into private Life, and influence many to such a Conduct, as is not well consistent with Equity and Honour. This is such an Argument of a little *narrow Mind*, as was not expected from a Person of your Lordship's good Sense and Knowledge of Mankind, and who, 'tis to be presumed, have yet *farther Favours* to expect from the Friendship and Approbation of your Fellow-Citizens.

I do not charge your Lordship with acting from such a Spirit. But do not your Lordship's late Nominations of Persons to serve the Office of Sheriffs give too much Reason for such a Supposition?

sition? Or can any one who impartially judges help suspecting, that, in this Affair, your Lordship was a *little* influenced by private Resentment and Party Spleen? Five of the Gentlemen nominated by your Lordship are *known* to be Dissenters from the established Church, and as such must be supposed not intirely to approve the Method of Communion in that Church, much less to approve the Practice of Qualifying themselves for Civil Offices by such Communion. Could your Lordship be *ignorant* of their Principles? Or can those Gentlemen or their Friends think themselves *kindly treated*, in being *forced* by your Lordship, either to qualify themselves by a Method that is contrary to their Judgments and Principles, or in having thus *squeezed* out of their Pockets above four Hundred Pounds a Man to help build a Mansion House for my Lord Mayor? Could your Lordship be contented with no less a Number than *Five* out of *Nine*! With no less, my Lord, than *twenty Hundred Pounds* from the Dissenters in the Space of a few Weeks? Mr. Alderman *Barber*, who was never thought *over favourable* to any Dissenters, yet, as I am informed, I speak it to that Gentleman's Honour, could not be *prevailed* on, during his
May-

Mayoralty, to nominate any for the Office of Sheriffs, either for the *low Pleasure* of gratifying a *Party Zeal*, or for the sake of raising Money by *such mean Methods* for the Use and Service of the Publick.

The Five Gentlemen I have mentioned, as nominated by your Lordship, think themselves the more hardly dealt with, as they apprehend themselves to be *disqualified* by Law from serving the Office of Sheriff. And of this 'tis presumed your Lordship cannot be *ignorant*; and therefore they are at a Loss how to account for your Lordship's Conduct, and scarce know to what Motives to impute it.

But whatever was your Lordship's Intention, yet your Lordship's great Zeal in thus recommending five Dissenters out of nine Persons to the Choice of your Fellow-Citizens within the Space of a few Weeks, hath render'd it a Matter of very *serious Inquiry* amongst them, Whether your Lordship's Nomination of them is not *ipso facto* void? And, whether they are not *absolutely disqualified* by Act of Parliament? Your Lordship will not take it amiss if I a little examine this Affair, and convey my Judgment on it, by your Lordship, to the Publick.

By

By an Act 13 Car. II. *for the well governing and regulating of Corporations*, amongst other Things it is enacted,
 " That all Persons who shall be Mayors,
 " Aldermen, Recorders, Bailiffs, Town
 " Clerks, Common-Council-Men, and
 " other Persons then bearing Office or
 " Offices of Magistracy, or Places or
 " Trusts, or other Employments RELAT-
 " ING TO, or CONCERNING the Go-
 " vernment of the said respective Cities,
 " Corporations, &c. take the Oaths of
 " Allegiance, &c. and, That from and
 " after the Expiration of the said Com-
 " missions, no Person or Persons shall
 " for ever hereafter be placed, elected,
 " or chosen in, or to any of the Offices
 " or Places aforesaid," (*i. e. into any
 Places relating to, or concerning the Go-
 vernment of Corporations*) " That shall
 " not have within one Year next before
 " such Election or Choice, taken the Sa-
 " crament of the Lord's Supper accord-
 " ing to the Rites of the Church of *Eng-
 land* — and in default hereof, every
 " such Placing, Election, and Choice,
 " is hereby enacted and declared to be
 " void.

Your Lordship will please to ob-
 serve,

I. That

1. That the Qualification for all Offices or Places *relating to, or concerning* the Government of Corporations, is by this Act declared to be, taking the Sacrament of the Lord's Supper according to the Rites of the Church of *England*, within one Year next before such Election or Choice.

2. That no Person or Persons shall *for ever hereafter* be placed, elected, or chosen in or to any of the Offices or Places aforesaid, who is not thus *sacramentally Qualified*. The Saints, my Lord, are only to bear Rule !

3. That *in default* of such sacramental Qualification, every such Placing, Election, and Choice, *is enacted and declared to be void*.

All Corporations are therefore, my Lord, prohibited by this Act to place, elect, or choose into any Offices, or Places, relating to, or concerning them, any Persons who have not received the Sacrament in the Church of *England* within one Year next before such Election. By Consequence, the Election of Persons not so qualified, is illegal and unjustifiable ; is contrary to Act of Parliament, and expressly enacted and declared
to

to be absolutely void. If therefore any Dissenter be ever *so willing*, or *capable* to serve in any Offices relating to Corporations; yet, if he hath not received the Sacrament in the Church of *England* within one Year before his Choice, he is by Law incapable of serving. No Corporation can *legally* choose him; if they should choose such a one, it is contrary to Law, and their Choice is absolutely void. And therefore, it is humbly apprehended, my Lord, your Lordship could not *legally nominate* any one of the five Dissenters as fit and proper Persons to serve the Office of Sheriffs for the City of *London*, and County of *Middlesex*; because your Lordship knows, that the Office of Sheriff is an Office *relating to, and concerning* the Government of the Corporation of this City, and that the Corporation of the City cannot choose them; or if they should, yet, that such their Choice is absolutely void.

In Consequence of this, my Lord, no Dissenter is obliged to *regard* the City's Choice, any more than he is obliged to regard or submit to any other illegal Action of any Person or Persons whatsoever. Yea, my Lord, if he be a *good Citizen* and Subject, he is obliged to pay that Deference to the Laws of his Coun-

try, as to refuse absolutely that Office for which those Laws have disqualified him ; since it is scarce possible any Man should *pretend Conscience* for accepting the Honour of Corporation Offices, or for receiving the Sacrament as a Qualification for any secular Places whatsoever.

And as no Corporation can choose any Person or Persons whatsoever into any such Offices without such Qualification, it is impossible, according to *all Rules of Equity*, that Corporations can fine them for not accepting such Offices. Because an Election of *Persons disqualified* by Law is a *void Election*, i. e. really *no Election* ; and the Persons *so elected* are just in the same Condition as Persons *never elected at all*. And therefore as no Corporation can fine any Persons for not accepting any Office into which they were *never chosen*, so neither can they fine any Persons for not accepting such Offices, for receiving which *the Law disqualifies them* ; for this would be to suppose such Election *good*, which the Law declares *void* ; i. e. it supposes a real Election, when in reality there is none ; and that Corporations have a Power to do Actions contrary to Law, and to lay Fines upon Persons for not complying with them in
such

such illegal Actions. Dissenters *not* qualified as the Corporation Act directs, *have no Choice or Refusal* as to any corporate Offices. It is the Law refuses them, and prohibits their Acceptance of such Offices; and therefore the Pretence of fining them for such Refusal is fining them for a supposed Fault of which they are not guilty, or rather fining them for their Obedience to and Compliance with the Law.

The *being excluded* from serving in any Corporation Offices is it self a *real Penalty*, and a *publick Brand* of Infamy upon such Persons as refuse the sacramental Qualification. And the Law hath thought this a *sufficient Punishment* for such Refusal. Nor can your Lordship produce any Act of Parliament that impowers private Corporations to inflict the additional Penalty of a Fine, or to *punish* Persons *twice* for the same supposed Omission or Fault. And therefore, as the Corporation of *London* cannot choose into Offices Persons disqualified to serve them; so neither can they punish for want of that Qualification, beyond what the Laws have inflicted on that Account.

And agreeable to this reasoning the Case hath been tried and adjudged:

Pent. II. “ The Mayor, &c. of *Guilford* brought
P. 247. “ an Action of Debt against *Clark*, who
 “ refused to serve Bayliff for that Town,
 “ for 20*l.* by Virtue of a By-law of that
 “ Corporation, imposing the said Fine
 “ upon any Person for such Refusal.”
 The Defendant, *Clark*, pleaded 13 *Car.*
 II. *viz.* *That no Person should for ever be*
placed or chosen into any such Office that
shall not have within one Year before such
Election taken the Sacrament according to
the Rites of the Church of England, and
affirmed, that he was a Protestant Dis-
senter from the said Church, and had not
received the Sacrament within such Year
as aforesaid. Against this Plea the
 Mayor, &c. “ urged the Case of Sir
 “ *John Read*, made Sheriff of *Hertford-*
 “ *shire*, who was under an Excommuni-
 “ cation, and so could not receive the
 “ Sacrament; and who after he had
 “ held the Office for three Months left
 “ it, and was fined for it 500*l.* *Read*
 “ pleaded that the Act, 25 *Car.* II.
 “ against Popish Recusants, did avoid
 “ the said Office, upon his not having
 “ taken the Sacrament, which he was
 “ disabled to do by his Excommunica-
 “ tion. But, notwithstanding this Plea,
 “ he was adjudged by the Court of Ex-
 “ chequer to pay the 500*l.*”

But

But the Court held here, that the Matter pleaded by the Defendant, *Clark*, was a good Bar. For in regard, the Act 13 Car. II. (the Corporation Act) had enacted, *That none should be chosen who had not received the Sacrament within one Year before such Choice, and there could be no refusal before the Election: It was plain the Defendant, Clark, had not incurred the Penalty of the By-law; and that it differed from the Case of Sir J. Read, because he was once actually in the Office, and obliged to do all Things necessary for his proceeding in it. But in this Case (viz. in Clark's) to make a Default in the Defendant, there must have been Election antecedent, and the Election of such an one as the Defendant, is absolutely prohibited by the Statute.*

Your Lordship will perceive by this Instance, that the Case in Question hath been solemnly heard, debated, and determined in the Court of Exchequer, and appealed to in a like Trial as a determined and fixed Case, as will presently appear; and that therefore it remains on Record as a stated Rule, that no Dissenter, who hath not received the Sacrament within one Year before his Choice into any Office, is capable of such Choice; for that the Election of such an one is absolutely

lutely prohibited by the Statute: And by Consequence, that your Lordship's *Nomination* of such unqualified Persons is also *void*; since your Lordship cannot name to any Office any such Persons as the Law expressly prohibits the Choice of.

There is also another Case of like Nature, which I beg leave to lay before your Lordship; which is that of *Larwood*, chose Sheriff of *Norwich*: He pleaded *the same Statute*, 13 Car. II. and *that he was a Protestant Dissenter*. "The
Mod. Rep. Vol. IV. p. 269, "Attorney General replied, that the Act
Canon XXI. "of Uniformity obliged every Man to
 "receive the Sacrament three Times a
 "Year, according to the Liturgy of the
 "Church of *England*; and that, there-
 "fore, he ought to have taken the Sa-
 "crament within a Year before the
 "Election, and ought not to be excused
 "from taking the Office by his own De-
 "fault." *Larwood* rejoins, *He ought*
not as a Member of the Church of Eng-
land to have taken the Sacrament accord-
ing to the Rites of the Church, being as a
Protestant Dissenter exempted by the Tole-
ration Act. To this it was answered:
 "The intent of the 13th Car. II. was not
 "to keep Men out of the Church, but
 "to incapacitate such who would not

" con-

conform, that they might not hold any
 Office till they came into the Church ;
 for otherwise it would be to give a
 Man opportunity by his own wilful
 Default to avoid an Office of burthen,
 when it was coming upon him. And,
 though the Statute, 13 Car. II. says,
 that if the Person elected shall not
 within a Year before his Election re-
 ceive the Sacrament, that such Electi-
 on shall be void, yet that the Statute
 must have *a reasonable Exposition*, viz.
 it shall be void to claim any Benefit by
 the Office to which he is elected ; but
 not so void as that he shall not be pu-
 nished for not qualifying himself ; and
 that though the Act of Toleration,
 1 Will. and Mar. exempted Persons
 from being punished for Non-confor-
 mity, yet this was no excuse ; because
 the Punishment intended for *Larwood*
 was not for any Thing exempted by
 that Statute, but for an Offence at
 common Law, in not qualifying him-
 self to take the Office of a Sheriff for
 the Service of the Government, which
 by Law he ought to take upon him.

It was replied in *Larwood's* behalf, *That*
if the Election is made void by the Statute
of 13 Car. II. then the Defendant was
never lawfully chosen Sheriff, and so can-

not

not be punished; and that it would be very inconvenient if he should be compelled to act without a legal Election, because he would be incapable of executing any Process. As to the Objection, "That the incapacity arises from the Default of the Defendant himself," it was answered, that this was not material, because if he removes from the Corporation, he shall not be punished for not executing the Office, and yet he is hereby made incapable by his own Default: That the Neglect of not receiving the Sacrament was not an Offence at common Law, or against any Statute but only against the Canons, so that it doth not fall within the Cognisance of the temporal Courts to punish the Defendant for such Neglect.

These were the main Arguments used on each Side. The Court was divided in their Sentiments. Samuel Eyre, Justice, Salk. Rep. held That the Defendant was rendered incapable by the Corporation Act, and ought p. 168. not to be twice punished, viz. lose his Office by Virtue of the Statute, and be punished at common Law by Judgment in this Information; and he relied on the Case of Clark before mentioned.

Giles Eyre, Justice, and Holt, Chief Justice, held on the contrary the Election good; because "the Design of the
Cor-

" Corporation Act was not to exempt
 " any Person from serving in any Office
 " to which he was obliged before, and
 " was intended to discourage Dissenters,
 " and not to favour them; whereas, if
 " this Plea should be allowed, the Act
 " would enure to their Advantage. And
 " farther, that the King hath an Interest
 " in every Subject, and a Right to his
 " Service, and no Man can be exempt
 " from the Office of Sheriff but by Act
 " of Parliament, or Letters Patent."
 And therefore Judgment was given
 against *Larwood*.

However, as one Judge, and the Lord *Mod. Rep.*
 Keeper, as was said at the Bar, were of *V. 4. P.*
 a contrary Opinion, *viz.* that the De- *269, &c.*
 fendant was *sufficiently punished* by the
 Corporation Act, in being disabled to
 hold any Office or Employment of Pro-
 fit; and that to punish by an Informa-
 tion would be a double Punishment for
 one Offence, which the Law will not
 allow; he was therefore only fined in
 five Marks.

Your Lordship will please to observe,
 That in the Case of *Clark of Guilford*,
 the Court determined that *Clark's* Electi-
 on was absolutely void, as prohibited by
 the Corporation Act; and that in this
 of *Larwood* one of the Judges, and the
 C Lord

Lord Keeper were of Opinion that the said *Larwood* was also disabled by the said Corporation Act. And that though the other Judge, and Chief Justice *Holt*, gave Judgment against him, yet that in Consideration of the Authorities against them, they fined him only in five Marks, which was in Reality remitting the whole Fine.

If I may be allowed, my Lord, to examine the Reasons of so great a Lawyer as Chief Justice *Holt*, I think it may be made appear, that they are *contradictory* to themselves. For he saith the Design of the Corporation Act, *was not to exempt any Person from serving in any Office to which he was obliged before*, and *was intended to discourage Dissenters*. It is allowed that the Intention of this Statute *was to discourage Dissenters*. How? Why, by no other Methods but by *rendering them incapable* of being placed, elected or chosen in, or to any Offices or Places relating to, or concerning Corporations. For this is the *only Discouragement* that Statute lays them under. If then the Design of the Act was to *discourage* them, by laying them under *such Incapacities*, it must be in consequence the Design of it, not indeed to exempt them from serving in Offices as a *Favour*, but

but actually to prevent their being chosen into such, as before they had a *legal Capacity* for serving in, as a Penalty for their Dissenting; not considering such Offices as *Burthens*, but as Offices of *Honour and Trust*, and the common Privileges of *Englishmen*; and therefore if the Act inflicts such Incapacity of being chosen to them as a Discouragement or Punishment, it must necessarily *cut off the Obligation* actually to serve in them, unless his Lordship could suppose, that Persons can be render'd *incapable* of serving Offices, without being *exempted* from serving them: Or tell us, how any Law can inflict a Punishment for an Offence, and the Persons to be punished be under an Obligation of not submitting to the very Punishment appointed by it: Or could separate the Honour and the Burthen, and teach Men how to submit to the Burthen of an Office, without accepting the Honours and Trusts which such Burthen is attended with.

It was farther said, "That this *Incapacity*, or that which render'd *Larwood* incapable in this Case, was his *fault*, and deserved to be punished." 'Tis allowed, that the Corporation Act considers the *not receiving* the Sacrament within a Year before as a *Fault*, and was

designed, as the Chief Justice affirmed, to discourage Dissenters; and therefore *as a Discouragement* render'd them incapable of being ever chosen into them. And therefore, as the Corporation Act lays the Penalty of such an Incapacity upon Non-Conformity as a Discouragement; and, my Lord, 'tis no small Discouragement; surely such Fault of Non-Conformity ought not to be subject to the farther Penalty of an arbitrary Fine; because the Laws of *England* will not allow any Man to be punished Twice for the same Fault. The Act declares the

Sect. VII. Incapacity and *Voidance of such Offices* and Places to be as full *to all Intents and Purposes, as if the respective Persons so refusing were naturally dead.* So that this *Punishment* of Non-qualifying is *legal Death*; the *same Incapacity* for such Offices, as though the Persons were *naturally dead.* But was it his Lordship's Law and Equity, that *Englishmen* might be punished with Death for their Faults, and be afterwards liable to farther Punishment for being dead? Or, is it your Lordship's Equity, to fine them for not accepting the Office of Sheriff, whom the Law declares as incapable of serving it as if absolutely dead? Good, my Lord, a little *more Equity* towards dead Men!

Fines

Fines and Penalties, my Lord, are for living Citizens; but to inflict Fines and Penalties on the Dead, and upon those whom the Law hath put to Death, and for this very Reason, *because* they are dead, is a Cruelty that well becomes the Inquisition; but could not well be expected as the Doctrine of a Chief Justice of *England*, nor as the Practice of my Lord Mayor of *London*.

It is equally consistent what his Lordship farther adds, "That if *Larwood's* Plea from the Corporation Act should be allowed, then that Act which was made to *discourage* Dissenters, would *enure to their Advantage*," *i. e.* according to his Lordship's Law, their *very Discouragement* would be their *Advantage*; the *Penalty* laid on them would be their *Gain*. Had this been the Case, what would it prove, but that the Law was a *bad* Law, so far as it did *not answer* the End for which 'twas design'd, and that in Consequence the Makers of it, if they perceived it to turn out contrary to their Intentions, should have repealed or amended it. But his Lordship's Observation is not true; and in order to support it, he ought to have told us, how an Act which enures to the *Advantage* of Dissen-

Dissenters can be in that very Circumstance *any Discouragement* to them; or what is the *peculiar Advantage* which arises from *penal Laws*. He should have shewn how *publick Incapacities* for the common Advantages and Honours of Society, which have ever been esteemed as Hardships, and Brands of Infamy, can *encourage Dissenting*; that the Parliament who passed the Act, passed it with such a *View* of encouraging them, and as a Favour to them; or that they did not think such an Incapacity was a real Punishment, and did not intend to point Dissenters out hereby to the Nation, as Persons *unworthy* and unfit to be *intrusted* with any Offices or Places in any Corporation in *England*. If this was the Intention of the Act, as it evidently was, I think it must appear strange Doctrine from a Chief Justice to assert, that such an Act, if carried into Execution, would be a real Advantage to those, by the very Incapacity laid upon them, whom by that Incapacity he allows it was designed to discourage; for there is no other Clause in the Act that tends to discourage Dissenters but this.

What the Chief Justice farther added,
 " That the King hath *an Interest* in every Subject, and a Right to his Service,"

I think he himself hath obviated by adding, that "no Man can be exempt from the Office of Sheriff, but by Act of Parliament, or Letters Patents." The King hath unquestionably *an Interest* in, and a Right to the Service of every Subject. But then that Right *is limited* by Act of Parliament, and the King, I apprehend, hath no Right *to dispense* with penal Laws; no Right to the Service of any Man in such an Office, for which Office he is incapable of being chosen by Act of Parliament. The Corporation Act disables every Man from being elected, or chosen into Places or Offices in Corporations, without a Sacramental Qualification. And therefore without such a Sacramental Qualification the King hath no Right to the Service of any Man in any Corporation Offices; and I should humbly *presume*, no right to punish any Man for not being so qualified, by any other Discouragement or Penalty, than what that or other Acts of Parliament do plainly prescribe; any more than he hath a Right to employ such Persons whom the Law hath actually disabled from serving him. I hope I may say without Offence, that his Majesty hath *no right to employ Papists*. And if Protestant Dissenters must, by a Protestant Government, be included under,

under, and subjected to the same penal Laws and Incapacities with Papists; those Laws which put it out of his Majesty's Power to employ the one, do equally put it out of his Power to employ the other.

But I am not satisfied in his Lordship's Doctrine, that "No Man can be exempt
" from the Office of Sheriff, but by Act
" of Parliament, or Letters Patents." I think, but submit it to the Learned in the Law, that there is another Exemption full as strong, and that is *Death*. The Corporation Act declares Dissenters, refusing to qualify, *dead as to all Offices and Places*, as truly dead, as though they were *naturally so*. But would your Lordship nominate, or summons *the dead*, to be Sheriffs of this *living* City? Or, did the Chief Justice lay it down for Law, that his Majesty had a Right in his deceased Subjects? Or, that there was need of an Act of Parliament, or Letters Patents, to exempt them from the Office of Sheriffs?

Forgive me, my Lord, if I trespass upon your Lordship's Patience, by observing one Thing more, *viz.* that
" The Chief Justice observed, that no
" Man can take Advantage of his own
" Disability, and that where he may re-
" move

" move the Disability, he shall take no
 " Advantage of it; and that therefore
 " *Larwood* ought to have received the
 " Sacrament previous to his Choice, and
 " so could not take Advantage of his not
 " having received it." This, Mr. *Dee* Trial,
 in his Defence of *Sacheverell* calls, *Ex-* P. 213.
cusing one Fault by another. To this, I Folio.
 think, my Lord, it may be replied, that
 the Corporation Act considered the Ad-
 mission to Corporation Offices, as a very
great Privilege, and as an Affair of the
 highest Consequence. The Act was made
to perpetuate Corporations in the Hands of
Persons well affected to his Majesty and the
established Government, and for the Pre-
servation of the publick Peace both in
Church and State. For these Reasons
 the Commissioners appointed by the
 Act had power to remove any Persons
 from the said Offices, if they should
 deem it expedient for the publick Safety,
 and to place into such Offices other Per-
 sons in their room. Now, my Lord,
 could the Persons removed by the Com-
 missioners be punished for *not continuing*
 in their Offices? Or had the King a
 Right to their Services after the Commis-
 sioners had displaced them? Their Remo-
 val from such Places was deemed a suffi-
 cient Punishment for their supposed Dis-
 affection,

affection, without any farther Penalty inflicted upon them whatsoever.

In like manner, my Lord, all Persons in Corporation Offices were obliged to swear, that *it was not lawful, upon any Pretence whatsoever, to take Arms against the King, and that the solemn League and Covenant was an unlawful Oath*; and if they refused to take and subscribe the same their Places were declared to be void, as *though they were naturally dead*. Now, could any Corporation fine, my Lord, the Persons thus removed for not continuing in those Offices? Or would the Chief Justice have declared, that they *ought* to have removed their Disability, and could take no Advantage from it? Or, that their pleading that they had not, and could not take the said Oaths, was *only excusing one Fault by another*? My Lord, the Act put it out of the King's Power to continue any Persons in such Offices, who would not, or could not take the said Oaths; and their Removal out of such Places was not considered, as *their refusal* to serve in Offices which *they were obliged* to serve in, but as a *real Penalty* inflicted on them for not qualifying themselves according to Law, and as a Bar to their enjoying any such Privileges, in Corporations for the future.

In

In like manner, the Proviso, that "no
 " Person should ever be elected into any
 " Corporation Offices, without a previ-
 " ous Sacramental Qualification," was
 intended *as a Bar* to prevent such Per-
 sons from being ever chosen into Corpo-
 rations, who could not take the said
 Qualification; and it can be no more a
 Fault *not to accept* such Offices, into
 which a Person *can't be chosen*, than it
 could be *not to continue* in such Offices
 when *actually ejected* from them. *The*
Removal in the one Case, and *the Inca-*
capacity of Choice in the other, are both
 Penalties, Penalties for Non-Qualificati-
 on. And therefore though the Act
 might deem the Refusal of the Qua-
 lification in either Case a Crime, yet
 'tis impossible it could consider the very
 Things it prescribed as Penalties, to
 be Crimes that deserved farther Pe-
 nalties; or that the subjecting any
 Person to *one Punishment* should be
 the very Circumstance that should ren-
 der him liable *to another*: Or that any
 just Law can punish Persons by laying
 them under Incapacities, and at the
 same Time make those very Incapaci-
 ties Reasons for inflicting farther Pe-
 nalties. I am not Lawyer enough to
 determine what is Law, but I think I

can discern somewhat of common Equity and Justice.

But besides these two Cases already considered, I beg leave, my Lord, to mention two others ; principally for the sake of *the great Authorities* they are attended with. About the Year 1718. *Thomas Wigginton* was chosen by the Corporation of *Exon* to be one of the *Four Bailiffs* of that City. He refusing to serve in it, *P. Powel* was elected in his Room ; and upon his Refusal, *T. Townsend*. They were all Dissenters, and pleaded *the Corporation Act* as disqualifying them. Each was fined by the City *Sixty Pounds*. The Gentlemen chosen applied to Mr. Serjeant *Pengelly*, afterwards Lord Chief *Baron*, and desired his Opinion on the following Queries, " Is such
" Office of a Bailiff within the Statute of
" 13 *Car. 2*? Is that Act repealed? Is
" *A. B.* obliged to execute the said Office
" by Law, he having not received the
" Sacrament within the Time appointed
" by the said Act? And in case the Fine
" imposed on *A. B.* should be levied on
" his Goods, is it the most proper Way
" to replevy them, or to pay such Fine,
" and then bring his Action of Trespass." To these Queries it was answered, *The Office of Bailiff is within the Act, and that*

that part of the Statute, which relates to this Case, is not repealed. There hath been great Variety of Opinions as to the main Question: But I think, that A. B. is not obliged to accept and execute the Office, being absolutely disabled by the Statute. And if the Fine imposed by the City be levied, it will be proper to pay the Money after the Goods be seized, and to bring Trespass. 21 Octob. 1719. Thomas Penningly. The Corporation moved by very good Reasons did not think fit to prosecute the Suit, and never called on the Gentlemen for their Fines.

The other Case is that of *Shackleton* of *York*, whom the Common Council of that City did, in pursuance of their Charter, present with three others, to the Lord Mayor, &c. as fit and able Persons, to be chosen, two of them, Sheriffs for the Year, 1734. *Shackleton* was accordingly chosen for one, who being a Quaker pleaded in Bar the Corporation Act, &c. For this Refusal the Corporation fined him in 150*l*. The following Quere was put on his Account to a very worthy Person, who now fills one of the highest Offices in the Law, with the greatest Dignity and Honour: "Whether a Quaker can properly be chosen into the said Office of Sheriff, and if
" the

“ the Election is not void, as he hath not
 “ qualified himself as directed by the
 “ Corporation Act? ” To which Quere
 the following answer was returned: *I
 am of Opinion, That a Quaker cannot
 properly be chosen into the said Office, and
 that if he be, his Election is void, as he hath
 not qualified himself according to the Sta-
 tute, 13 Car. II.* The Corporation of
 York thought proper, for certain good
 Considerations, to remit the said Fine;
 nor would the Court, before which the
 Affair was tried, impose any other Pe-
 nalty upon him, alledging that would
 be to punish him twice for the same
 Fault.

I apprehend, my Lord, from these Au-
 thorities, and indeed from *the Nature* and
 Reason of the Corporation Act, that no
 unqualified Dissenter can be chosen into
 any Corporation Offices, and that many
 will be apt to think that your Lordship's
 Nomination of *no less than five* of such
 Dissenters, *as fit and proper* Persons to
 serve the Office of Sheriffs for this City
 and County, was not agreeable to *that*
Candour and Equity which might have
 been expected from the Rest of your
 Lordship's Character and Conduct; nor
 quite consistent with the *Rules of Pru-*
dence, in one who may possibly have oc-
 casion

caſion for their Friendſhip and Aſſiſtance. Had the Office of Sheriff, my Lord, been an *Office of profit*, as well as *burthen and expence*, I preſume they would not have been *ſo very much* in your Lordſhip's kind Thoughts, and that your Lordſhip would have had *no manner of Scruple* and Doubt about the Nature and Deſign of the Corporation Act; but would have judged them all *to a Man* to have been utterly diſqualified by it. But however they are *extreamly obliged* to your Lordſhip's *great Goodneſs*, in that though they may be diſqualified for Places of *any profit*, yet that your Lordſhip thinks them *peculiarly worthy* of all the *Honours* you can beſtow on them, and have in *ſo diſtinguiſhing* a Manner held them up to your Fellow Citizens, as to name five of their Number out of the Nine for Sheriffs, and thus recommended them to their Favour at the late Election. This, my Lord, is *peculiarly good* and kind, and whatever Cenſures others may paſs on your Lordſhip's Conduct in this Affair, I will not allow my ſelf to ſuſpect, that any *Party Views* or Prejudices could influence your Lordſhip to do, what carries in the Face of it a very great Compliment, and *high Opinion* of their Integrity and Capacity,

and

and indeed *a real Reflection* on the Corporation Act, which hath prohibited the Choice of those, and laid them under an intire Disability, whom you, my *good Lord*, seem to think the *very fittest* of all your Fellow Citizens. And agreeably to this Conduct, and that your Lordship may *be consistent* with your self in *the Chair* of this City, and in your *Seat* in Parliament, and that you may not be chargeable with this *evident Contradiction*, of voting those to be *unworthy* of Places in the House of Commons, whom your Lordship hath voted and declared *fit for, and worthy* of them, as Lord Mayor of *London*; I think your Lordship must in *all Decency, Equity and Honour*, consistent with your *known Character* as *a worthy Man*, and a Gentleman of Probity, and to avoid, what you are yet *clear* of, the Appearance of having *no Principles*, or *shifting* your Principles, or *contradicting* your Principles, or *sacrificing* your Principles to a Party: I say, my Lord, on these Accounts, and to prevent all Suspicion of an inconsistent Conduct, your Lordship must lend the Dissenters your *Assistance* and Friendship, either for *a Repeal, or Explanation* of the incapacitating Laws against them, whenever they apply to Parliament on this Account.

Or,

Or, if I am mistaken in this *favourable Judgment* of your Lordship's Behaviour in this Instance ; for if I must err, I would always do it *on the Side of Charity* and good Nature ; yet your Lordship's *good Will* to the Dissenters may be made appear in another View. For your Lordship's Nomination certainly was intended either to recommend them *as fit Persons for the Office* : This is doing them *great Honour*, my Lord : Or to recommend them as *fit Persons to furnish* the City *with* large Sums of Money to help build a Mansion House for my Lord Mayor. This is *a great Favour*, my Lord. For this is giving your Lordship's Opinion that they are *Men of Wealth*, and that their Money is *well gotten*. It is giving them *an Opportunity* for Acts of *publick Munificence*, and to help to support the Honour of the City, and *the Dignity* of Magistracy. It is *easing* them of some of their *superfluous Cash*, and helps, my Lord, *to cut off* some *Occasions* and Means of that *Luxury* and Excess, which your Lordship and others have *on proper Occasions* with so much Reason and Virtue complained of. Which, or whether all of these *Motives* may not have concurred to determine your Lordship in this Affair, your Lord-

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ship

ship best knows, and others will judge ; nor can the Dissenters *ever forget* your Lordship's *peculiar Favour* to them on this Account; that when your Lordship had but *nine Persons* to recommend for Sheriffs, or building my Lord Mayor's Mansion House, your Lordship was *so partially good* to them, as to name *five of their Number* out of that nine, as the *very fittest* Persons for these important Services, your Lordship could think of.

However, if your Lordship's *equitable Scheme*, QUALITY or FINE, should take place, will not, my Lord, the Dissenters have too much Reason to complain, that besides the Incapacities they are laid under by Parliament, purely for refusing the Qualification, so they are liable to farther discretionary Penalties *merely* for the same Refusal? For this, my Lord, is in reality their Case, and their only Fault, that subjects them to Prosecutions and Fines; even their *refusing*, my Lord, what they *cannot in Conscience do*; refusing, as they imagine, *to prostitute* an Institution of our Blessed Saviour *to secular Purposes*, which the Divines of the Church of *England* have lately, in their Disputes concerning the Sacrament, declared to be *the most solemn and significant*

cant Institution in the Christian Church. The Dissenters, my Lord, are to a Man *willing* to serve his Majesty and their Country in all Offices, according to their Abilities or Fortunes, provided they can do it with a *safe Conscience*. But the sacramental Qualification they think many of them to be *absolutely unlawful*, and dare not receive it *in their own* Congregations, or in *any other* Church whatsoever. And, therefore, if they are liable to any arbitrary Penalties, that particular Corporations may think fit to lay them under, they are really liable to them, *not for refusing* to serve those Corporations, which they are always willing to do, but for refusing, *out of Conscience*, what they apprehend to be *absolutely unlawful*.

If this, my Lord, should really be the *unfortunate Situation* of the Protestant Dissenters, how shall we be able, my Lord, to clear the Church of *England* from the *Charge of Persecution*? Of *Persecution*, my Lord, for Conscience Sake? Many Persons, my Lord, amongst them scruple the *Posture of Kneeling* at the Sacrament, but they generally scruple the *receiving it* any where, or in any Manner, as a *Qualification* for secular Employments. Under these Scruples, supposing,

my Lord, they are no more than *unreasonable* Scruples, what must they do? If any Corporation chooses them into Offices, they are by Law disabled to accept them without the Qualification. And yet, on the other Hand, *they must* it seems *accept* them, in Obedience to the Orders of the Corporation, under any arbitrary Fine that the Corporation shall think fit to impose on them. What is it that renders them liable to this hard Treatment? Not their Refusal to serve in Corporation Offices. This *their Enemies* will not charge them with. But their scrupling to do what they count is *a Profanation of a very solemn Institution* of Christ, the receiving the Sacrament as a Qualification for civil Offices and Profits. So that when punished on these Accounts, it is a *Punishment for Conscience Sake*, a Punishment for *not doing* what in Conscience they *cannot do*, and what they apprehend their doing would be an Offence against God.

I am afraid, my Lord, that even *the Toleration Act* it self will be but of *little Benefit* to the Dissenters, and the *Design* of it oftentimes *frustrated*, if they are subject to the Difficulties mentioned. Your Lordship hath been so *exceeding kind*, as to nominate *five of them* for Sheriffs

Sheriffs of this City, and to do all you can *to oblige* them to qualify, or pay above 400*l.* *for refusing to do it.* If your Lordship's Successors should follow your Example, five of them possibly will be in the same Circumstances every Year; and if *their Zeal* should be yet greater than your Lordship's, they may nominate *eight or nine* of them *yearly*, and put them thereby under the same Difficulties. And, if the other Corporations in *England* should imitate *the Pattern* your good Lordship hath set them, the Defaulters will be annually fined in every County and Corporation Town in *England*, and forced to pay, or vindicate themselves at their respective *Affizes*. They are *greatly beholden* to your Lordship for this Favour. But if they must be *perpetually liable* to these Fines and Prosecutions, for their Non-conformity, of *what great Benefit* is their Toleration to them? Every Corporation in *Imitation* of your Lordship, will be continually *barassing* them, and they can never know an end of their Prosecutions.

The Statute, 23 *Eliz.* laid a Penalty of 20*l.* *per Month* on every Person absenting from Church, or usual Place of Common Prayer. By 1 *Eliz.* all Absenters from the Parish Church were subjected

jected to the *Pain of Punishment by the Censures of the Church*, and to the Penalty of one Shilling for every Omission to attend there. Other Penalties were inflicted on them by several other Statutes. The Act of Toleration expressly exempts them from the Penalty of these several Acts. But it seems your Lordship imagines, that the Corporation in *London* hath a Power to lay on them a Penalty of 400 *l.* or 600 *l.* for not coming to Church, and every *petty* Corporation in *England* a like Power to fine them according to their several *By-Laws*, in such Sums as they think proper. But if the Toleration Act exempts them from the *Necessity* of coming to Church, the Dissenters cannot imagine themselves under any *Obligation* of doing it, nor that they *can be liable* to any Fine for the not doing it; and therefore not liable to any Fine from any Corporation in *England*; because this would be *evading the Intention* of the Toleration Act, which was to *free* them from the Penalties of Non-conformity.

Salk. p. 168. I know 'twas urged in the Case of *Larwood*, "That all Persons are obliged to observe the establish'd Discipline in the Church by *Q. Elizabeth*." And that Chief Justice *Holt* was pleased to affirm,

affirm, "That every Man is enjoined by
 " the Ecclesiastical Law to take the Sa-
 " crament once in a Year, and that *this*
 " *is part of the Law of the Land.*" But
 I presume that the *Toleration Act* hath
 settled this Affair *contrary to his Lord-*
ship's Opinion. For that Act makes the
 following Recital, "That neither the
 " Statute made 23 *Eliz.* entitled, &c. nor
 " that Branch or Clause of a Statute made
 " 1 *Eliz.* whereby all Persons having no
 " lawful or reasonable Excuse to be ab-
 " sent, are required to resort to their Pa-
 " rish Church or Chapel, or some usual
 " Place where the Common Prayer shall
 " be used, upon *Pain of Punishment by*
 " *the Censures of the Church, &c.* shall be
 " construed to extend to any Person or
 " Persons Dissenting from the Church
 " of *England.*" By Consequence the
 Dissenters are *subject to no Church Censures,*
 for not coming to Church, or not recei-
 ving the Sacrament there. And agree-
 ably hereto the said Toleration Act ex-
 pressly declares, *Sect. IV. Nor shall any*
of the said Persons be prosecuted in any
Ecclesiastical Court for or by reason of
their Non-Conformity to the Church of
England. If therefore the Ecclesiastical
 Law doth *injoin* every Man to take the
 Sacrament once a Year, yet *that Injun-*
ction

tion is render'd void by this Act, and is no longer part of the Law of the Land, at least in the Case of Dissenters, who are not liable to be prosecuted for Non-Conformity in *any Ecclesiastical Court*, nor subject to any Pain of Punishment by *the Censures of the Church*. And therefore if it was Law what was observed in favour of *Larwood*, "That the Neglect of
 " not Receiving the Sacrament was not
 " an Offence at Common Law, or against
 " any Statute, but only against the Ca-
 " nons, and therefore did not fall with-
 " in the Cognizance of the Temporal
 " Courts;" and if the Act of Toleration exempts the not coming to Church from the Cognizance of the Ecclesiastical Courts, and muzzles up the Mouths of the *Spiritual Canons* of the Church, 'tis not an Offence against the *Spiritual Law*; and by consequence no Offence against either the Temporal or the Ecclesiastical Law, and therefore I presume against no Law at all, and therefore not liable to any Punishment in any Court, or by any Law whatsoever.

But the Dissenters cannot but think, that if they *are liable* to arbitrary Fines from every petty Corporation in *England*, for their not coming to Church, and refusal to qualify themselves, they *are de-
 frauded*

frauded of the Benefit intended them by the
Toleration Act, and even yet in a State of
 severe and unrighteous Persecution. They
 are *persecuted*, my Lord, on the one hand,
 by being *disabled by Law*, for all Offices
 in Corporations, for their not being able
in Conscience to *prostitute the Sacrament* by
 way of Qualification; and persecuted on
 the other, by being *liable to very severe*
Penalties for not qualifying, and not ac-
 cepting such Places and Offices, for which
 the Law incapacitates them. If this be
 Justice, Equity or Honour, or any way
 consistent with the Principles of Liberty,
 or the Rights of Society, let all the im-
 partial Part of Mankind determine. If
 the Dissenters must be punished by *civil*
Incapacities for their Non-Conformity,
 let not the Church and State load them-
 selves with *the Infamy* of so unrighteous
 a Procedure, as to make *one Punishment*
the Foundation of another, and to render
 criminal the very Incapacity they them-
 selves have created as a real Punishment
 of them. Remove the Incapacity and
 the Dissenters will gladly serve his Maje-
 sty and the State in every Place and Sta-
 tion, that can be desired or expected from
 them. But if this be *too great a Favour*,
 at least surely they ought in justice to be
exempted from all Nomination to Offices,
 and from all Fines and Penalties for not
 F accept-

accepting them, whilst the Laws continue that lay them under the Incapacity of accepting them.

I am glad, my Lord, that the Dissenters are determined to pay their Compliments to your Lordship and the City, by trying your Lordship's Right of Nomination, and their Right of Choice. I am persuaded the Trial, my Lord, must *do them good*, which ever way it be determined. If they have a *Determination in their Favour*, it will prevent, my Lord, *future Trouble* to them from little, *narrow minded Men*, who nominate them to Office *from Spite* and Party Hatred against them *as Dissenters*; not with any Design *that they should serve*, but purely to have the *mean Pleasure* of fining them for a Refusal. Or if the *Determination should go against them*, they will find themselves *obliged to appeal* to Parliament for the Redress of their Grievances; and though I know not whether they *may obtain* the Removal of their Incapacities, yet *I will never believe* that a *British Parliament* will suffer them thus *to continue disabled* by Law, from serving in any Offices or Places; and at the same Time *leave them liable* to the most exemplary Punishments and arbitrary Fines *for such Disability*. If there be any Honour and Justice remaining, I think their *very Enemies* must

be willing to relieve them one way or other; either *by repealing* the Penal Laws, or *by farther explaining* them in their Favour.

I have nothing farther to add, my Lord, but to ask your Lordship's Pardon for this plain Address. But I the *more easily* excuse my self, and hope for your Lordship's Indulgence, as I consider your Lordship's Station and Character, your Candor and good Sense, and your great and *professed* Regard to the *Liberties* of your Fellow Subjects. Your Lordship hath been pleased to render your self *very remarkable* by the *peculiar* Regard you have shewn, in your Nominations for Sheriffs, to the Dissenters. Wonder not, therefore, my Lord, that one of their Number, who speaks, he believes, the Sense of their Body, should *single out* your Lordship for such an Address. If real *publick Spirit* hath governed your Lordship in this Affair, your Lordship will have the *Satisfaction* of it in your own Mind; and 'tis pity but your Lordship could make this *publick Spiritedness* appear to your Fellow Citizens. If *zeal for the Church* was your Lordship's Motive, some *may approve* your Lordship's Conduct as a good Churchman. Most Persons will, I believe, wish your Lordship's Zeal had been *temper'd with a little more Prudence* and Equi-

Equity. If the *Desire of getting Money* for the *Structure in Stocks Market*, to raise it with *greater Splendor* and *Magnificence* was your Lordship's Inducement, many will be apt to wonder how your Lordship *could thus submit* to such a — Method of *forcing Money* out of your Fellow Citizens Purses, and be at a Loss to account for the Justice or Honour of it; and how splendid and proud soever the Mansion House may hereafter appear, have too much Reason when they pass by it, to throw this severe and cruel Censure on it: **THIS IS THE HOUSE** that was *founded in Iniquity*, and *raised up by Oppression*. If, my Lord, any *little Resentments*, any private Piques, any *party-Prejudices*, could influence your Lordship: Where, will they say, is your Lordship's *Patriotism*? What, is *the Patriot Barnard* also transformed into *the low Instrument* of a Party? As for my self, my Lord, I wish your Lordship's Conduct in this Affair *appeared to all Mankind in its true and proper Light*, and I am sure your Lordship would have *as high a Share* in their good Opinion and Approbation on this Account, as you have in *the Esteem* and Veneration of, my Lord,

*Your Lordship's most obedient
and dutiful Servant.*

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